Before the Federal Communications Commission Washington, DC 20554

In the Matter of)	
InnoCaption, Inc.))))	File No.: EB-TCD-14-00017284 Acct. No.: 201532170018 FRN: 0021788484
	ORDER	

Adopted: September 24, 2015 Released: September 24, 2015

By the Chief, Enforcement Bureau:

- 1. The Enforcement Bureau (Bureau) of the Federal Communications Commission (Commission) has entered into a Consent Decree to resolve its investigation into whether InnoCaption, Inc. (InnoCaption or Company), was unable to accept and handle emergency calls made by users of its wireless Internet Protocol Captioned Telephone Service (IP CTS) and submitted inaccurate data to the Telecommunications Relay Service (TRS) Fund administrator. The ability to make emergency calls and to have them handled expeditiously is a critical service for all citizens, including persons with disabilities accessing our nation's communications network through TRS. Providers of TRS must be able to accept and handle emergency calls at all times and to the extent there are any problems in accepting and handling such emergency calls, those problems should be detected by the TRS provider and notice should be provided to the Commission. In addition, in order to maintain the integrity of the TRS Fund and to avoid undermining the efficiency and effectiveness of the TRS program, it is essential that TRS providers adhere to Commission rules requiring those providers to submit accurate data to the TRS Fund administrator.
- 2. In September 2014, Commission staff found that the Company did not accept and handle emergency calls made through its IP CTS. To settle this matter InnoCaption admits that the Company learned that it could not accept and handle emergency calls prior to being certified and made inaccurate submissions to the TRS Fund administrator. While the Company indicated the problem had been corrected, subsequent 911 test calls through InnoCaption's service continued to reflect the Company's inability to accept and handle emergency calls in compliance with the Commission's emergency call handling rule. InnoCaption will implement a compliance plan, pay a \$25,000 civil penalty, and, until the termination of the Consent Decree, file compliance reports with the Bureau. Finally, Innocaption has reimbursed the TRS Fund for money the Company received from the TRS Fund to which it was not entitled, and represents and warrants that it has relinquished any and all rights and claims to reimbursements that the Company may otherwise seek, for IP CTS calls handled during that time period.

Nos. 13-24, 10-51, 03-123, Order, 30 FCC 2934 (CGB 2015).

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¹ On April 2, 2015, InnoCaption announced that to address its emergency call handling issues, the Company would temporarily cease to offer IP CTS as of April 7, 2015. On April 7, 2015, the Consumer and Governmental Affairs Bureau issued an order temporarily suspending InnoCaption's certification. *Misuse of Internet Protocol (IP) Captioned Telephone Service, Structure and Practices of the Video Relay Service Program, Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, Miracom USA, Inc. (now InnoCaption, Inc.), Certification to Provide Internet Protocol Captioned Telephone Service (IP CTS), Review of InnoCaption, Inc., Request for Review of Withholding of TRS Fund Compensation Payments, CG Docket*

- 3. After reviewing the terms of the Consent Decree and evaluating the facts before us, we find that the public interest would be served by adopting the Consent Decree and terminating the referenced investigation regarding InnoCaption's compliance with the Commission's rules governing TRS.²
- 4. The facts disclosed through our investigation bear on InnoCaption's qualifications to hold a Commission certification and may be used in any determination as to whether InnoCaption is eligible for certification as a Telecommunications Relay Services provider.
- 5. Accordingly, **IT IS ORDERED** that, pursuant to Section 4(i) of the Communications Act of 1934, as amended,³ and the authority delegated by Sections 0.111 and 0.311 of the Rules,⁴ the attached Consent Decree **IS ADOPTED** and its terms incorporated by reference.
 - 6. IT IS FURTHER ORDERED that the above-captioned matter IS TERMINATED.
- 7. **IT IS FURTHER ORDERED** that a copy of this Order and Consent Decree shall be sent by first class mail and certified mail, return receipt requested, to Cristina Duarte, Regulatory Affairs Manager, InnoCaption, Inc., 2913-C Saturn Street, Brea, CA 92821.

FEDERAL COMMUNICATIONS COMMISSION

Travis LeBlanc Chief Enforcement Bureau

⁴ 47 C.F.R §§ 0.111, 0.311.

² See 47 C.F.R. §§ 64.604(a)(3)(ii), 64.604(c)(5)(iii)(D)(1), 64.605(a)(2).

³ 47 U.S.C. § 154(i).

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CONSENT DECREE

1. The Enforcement Bureau (Bureau) of the Federal Communications Commission and InnoCaption, Inc. (InnoCaption or Company), by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Enforcement Bureau's investigation into whether InnoCaption violated Sections 64.604(a)(3)(ii), 64.604(c)(5)(iii)(D)(1) and 64.605(a)(2) of the Commission's Rules in the Company's provision of Internet Protocol Captioned Telephone Service (IP CTS) and submissions to the TRS Fund administrator.¹

I. **DEFINITIONS**

- 2. For the purposes of this Consent Decree, the following definitions shall apply:
 - (a) "Act" means the Communications Act of 1934, as amended.²
 - (b) "Adopting Order" means an order of the Bureau adopting the terms of this Consent Decree without change, addition, deletion, or modification.
 - (c) "Bureau" means the Enforcement Bureau of the Federal Communications Commission.
 - (d) "Call Detail Record" or "CDR" means the monthly data submissions the Company provides to the TRS Fund administrator for the purpose of seeking reimbursement from the TRS Fund. See 47 C.F.R. § 64.604(c)(5)(iii)(D)(1)-(3).
 - (e) "Commission" and "FCC" mean the Federal Communications Commission and all of its bureaus and offices.
 - (f) "Communications Assistant" or "CA" shall have the same meaning as the term is defined in 47 C.F.R. § 64.601(a)(10).
 - (g) "Communications Laws" means collectively, the Act, the Rules, and the published and promulgated orders and decisions of the Commission to which InnoCaption is subject by virtue of its business activities, including but not limited to the TRS Rules.
 - (h) "Compliance Plan" means the compliance obligations, program, and procedures described in this Consent Decree at paragraph 16.
 - (i) "Covered Personnel" means all employees and agents of InnoCaption who perform, or supervise, oversee, or manage the performance of duties that relate to InnoCaption's responsibilities under the Communications Laws, including the TRS Rules.

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¹ 47 C.F.R. §§ 64.604(a)(3)(ii), 64.604(c)(5)(iii)(D)(1), 64.605(a)(2).

² 47 U.S.C. § 151 et seq.

- (j) "Effective Date" means the date by which both the Bureau and Company have signed the Consent Decree.
- (k) "Emergency Call Handling Requirements" means requirements adopted in the TRS Rules to enable emergency calling, including facilitating the acceptance and handling of 911 Calls made by TRS users.
- (l) "InnoCaption" or "Company" means InnoCaption, Inc. and its affiliates, subsidiaries, predecessors-in-interest, and successors-in-interest.
- (m) "Internet Protocol Captioned Telephone Service" or "IP CTS" shall have the same meaning as the term is defined in 47 C.F.R, § 64.601(a)(16).
- (n) "Investigation" means the investigation commenced by the Bureau in EB-TCD-14-00017284 regarding whether InnoCaption violated the Commission's TRS Rules.
- (o) "LOI" means the Letter of Inquiry issued by the Bureau to InnoCaption on September 29, 2014, on file in EB-TCD-14-00017284 regarding the Company's provision of Internet Protocol Captioned Telephone Service and submissions to the TRS Fund administrator.
- (p) "911 Call" means any IP CTS call initiated by an end-user by dialing 9-1-1 for the purpose of accessing an emergency service provider.
- (q) "Operating Procedures" means the standard internal operating procedures and compliance policies established by the Company to implement the Compliance Plan.
- (r) "Parties" means the Company and the Bureau, each of which is a "Party."
- (s) "Public Safety Answering Point" or "PSAP" shall have the same meaning as the term is defined in 47 C.F.R. § 64.3000(c).
- (t) "Rules" means the Commission's regulations found in Title 47 of the Code of Federal Regulations.
- (u) "Telecommunications Relay Services" or "TRS" shall have the same meaning as the term is defined in 47 C.F.R, § 64.601(a)(32).
- (v) "TRS Fund administrator" means the entity selected by the Commission to administer the TRS Fund, currently "RolkaLoube."
- (w) "TRS Rules" means the regulations set forth at Section 64.601 through Section 64.636 of the Rules, 47 C.F.R. § 64.601-64.636, Commission orders implementing and interpreting 47 U.S.C. § 225 of the Act, and any other Rules and orders applicable to InnoCaption as an iTRS provider.

II. BACKGROUND

3. Telecommunications Relay Services (TRS) enable an individual with a hearing or speech disability to communicate with others in a manner that is functionally equivalent to a hearing individual's ability to communicate using voice communications services.³ In 2007, the Commission recognized Internet Protocol Captioned Telephone Service (IP CTS) as an eligible form of TRS, compensable from the Interstate TRS Fund.⁴ IP CTS enables people who can use their own voice but have difficulty hearing when on a call, to engage in a telephone conversation using an Internet Protocol (IP) enabled device that allows them to listen to the other party while simultaneously reading captions of what that party is

³ See 46 C.F.R. § 64.601(a)(32).

⁴ Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, CG Docket No. 03-123, Declaratory Ruling, 22 FCC Rcd 379 (2007) (IP CTS Declaratory Ruling).

saying.⁵ In order to provide IP CTS and be compensated from the Interstate TRS Fund, an entity must be certified by the Commission.⁶

- 4. As a part of the functional equivalency mandate, TRS providers must be capable of handling any type of call normally provided by telecommunications carriers, including 911 Calls.⁷ To emphasize the importance of TRS users' access to emergency services, the Commission adopted specific Emergency Call Handling Requirements. Pursuant to Section 64.605(a)(2) of the Rules, IP CTS providers are required to accept and handle 911 Calls, determine an appropriate public safety answering point (PSAP), designated statewide default answering point, or appropriate local emergency authority that corresponds to the caller's location, and relay the call to that entity. IP CTS providers also must implement a system that ensures that 911 Calls are answered before non-emergency calls, and among other things, allows the user's information, *e.g.*, caller's name and location, to be collected at the beginning of the call and provided to the PSAP, designated statewide default answering point, or appropriate local emergency authority to enable a 911 Call to be reconnected in the event one or both legs of a call is disconnected.⁸ IP CTS providers may allow third party entities to handle 911 Calls or any function associated with handling 911 Calls on its behalf, but the certified provider remains ultimately responsible for complying with the Rules.⁹
- 5. InnoCaption is a certified IP CTS provider that solely provides service through a mobile application (App).¹⁰ To produce captions delivered to users of its service, InnoCaption uses stenographers, rather than the automated speech recognition-based method used by other IP CTS providers. The Company has asserted that this method allows it to achieve at least a 95 percent caption accuracy rate and display captions within one to two seconds of the spoken words.¹¹ On May 13, 2014, the Consumer and Governmental Affairs Bureau (CGB) granted InnoCaption a conditional certification based on review of the Company's application for certification, supplemental filings, and the Company's representations that it could comply with the TRS Rules.¹² InnoCaption began offering IP CTS on June

⁵ See 47 CFR § 64.601(a)(16).

⁶ See 47 CFR § 64.606.

⁷ See 47 C.F.R. § 64.604(a)(3)(ii). The mandatory minimum standards governing the provision of TRS, requires that TRS providers have the capability to handle any type of call normally provided by telecommunications carriers unless the Commission determines that it is not technologically feasible to do so or the requirement to handle a specific type of call has been waived by the Commission.

⁸ See 47 CFR § 64.605(a)(2).

⁹ See 47 C.F.R. § 64.605(a)(2)(i).

¹⁰ Notice of Conditional Grant of Application of Miracom USA, Inc., for Certification as a Provider of Internet Protocol Captioned Telephone Service Eligible for Compensation from the Telecommunications Relay Service Fund, CG Docket Nos. 03-123, 10-51, and 13-24, Public Notice, 29 FCC Red 5105 (2014) (Miracom Certification PN). Conditional certification was granted to Miracom, USA, Inc., the entity who submitted the application for certification. Miracom notified the Commission on Aug. 11, 2014, that it had changed its name to InnoCaption, Inc.

¹¹ Miracom Certification PN, 29 FCC Rcd 5105, at *2, n. 9.

Notice of Conditional Grant of Application of Miracom USA, Inc., for Certification as a Provider of Internet Protocol Captioned Telephone Service Eligible for Compensation from the Telecommunications Relay Service Fund, CG Docket Nos. 03-123, 10-51, and 13-24, Public Notice, 29 FCC Rcd 5105 (2014) (Miracom Certification PN). Conditional certification was granted to Miracom, USA, Inc., the entity who submitted the application for certification. Miracom changed its name to InnoCaption, Inc. post certification. See also, Miracom USA, Inc., Application of Miracom USA, Inc. for Certification to Provide IP Captioned Telephone Service, CG Docket No. 03-123 (filed Nov. 23, 2011) (Application); Letters from George L. Lyon, Jr., Lukas, Nace, Gutierrez & Sachs, LLP, to Marlene H. Dortch, FCC Secretary, and attachments, CG Docket Nos. 03-123, 10-51 (filed May 7, 2012) (Miracom May 7, 2012 Submission); Miracom, Amendment to Application of Miracom USA, Inc. for Certification to Provide IP Captioned Telephone Service, CG Docket Nos. 03-123, 10-51 (filed May 17, 2012) (Miracom May 17, 2012 Amendment); Miracom, Amendment to Application of Miracom USA, Inc. for Certification to Provide IP Captioned (continued....)

- 11, 2014; the Company subsequently requested compensation for minutes handled from June 2014 forward.
- 6. In September 2014, Commission staff tested InnoCaption's service and found that the Company did not accept 911 Calls. Specifically, after dialing 9-1-1 staff received a pop-up message stating "no emergency call supported. Please exit InnoCaption dialer and call from phone dialer." CGB notified InnoCaption of the failed test calls and directed the Company to provide the Commission with additional information and notice to consumers of its inability to handle 911 Calls. On September 29, 2014, the Bureau's Telecommunications Consumers Division (TCD) issued a Letter of Inquiry (LOI) to InnoCaption seeking information on its 911 Call handling process, including testing and complaints. InnoCaption timely filed responses to both inquiries.
- 7. InnoCaption admitted that the Company learned that it could not accept and handle 911 Calls prior to being certified. InnoCaption also admitted that at no time before the inquiries did the Company notify the Commission that it could not comply with the Emergency Call Handling Requirements. Requirements.
- 8. While InnoCaption claims to have implemented a 911 call handling solution in early September, the Commission conducted test calls from September 12, 2014, through March 16, 2015, and all test calls failed because they either were not accepted or did not comply with other Emergency Call Handling Requirements, *e.g.*, passing through information to the PSAP.¹⁷ Although InnoCaption was unable to accept and handle 911 calls, the Company submitted minutes of use to the TRS Fund administrator for compensation and these submissions included a certification made under penalty of perjury that the minutes were handled in compliance with the Commission's rules.¹⁸

¹³ See Letter from Gregory Hlibok, Chief, Disability Rights Office, Federal Communications Commission to Chuck Owen, COO & Senior VP, InnoCaption, Inc. (Sept. 25, 2014).

¹⁴ See Letter of Inquiry from Richard A. Hindman, Division Chief, Telecommunications Consumers Division, Federal Communications Commission to Chuck Owen, COO & Senior VP, InnoCaption, Inc. (filed Sept. 29, 2014, in EB-TCD-14-00017284) (InnoCaption LOI).

¹⁵ See Letter from George Lyon, Counsel, InnoCaption, Inc., to Sharon Lee, Deputy Division Chief, Telecommunications Consumers Division, Federal Communications Commission (filed Oct. 27, 2014, in EB-TCD-14-00017284) (Oct. 27, 2014 Supplemental LOI Response).

¹⁶ See Letter from George Lyon, Counsel, InnoCaption, Inc., to Sharon Lee, Deputy Division Chief, Telecommunications Consumers Division, Federal Communications Commission (filed Oct. 9, 2014, in EB-TCD-14-00017284) (Oct. 9, 2014 LOI response). See also, Oct. 27, 2014 Supplemental LOI Response.

¹⁷ On April 2, 2015, InnoCaption notified users that it would be suspending offering service effective April 7, 2015, to address compliance issues associated with the Company's ability to handle 911 Calls. *See* InnoCaption Home Page, http://www.innocaption.com (last visited September 15, 2015). CGB subsequently suspended InnoCaption's certification on April 7, 2015. *See Misuse of Internet Protocol (IP) Captioned Telephone Service, Structure and Practices of the Video Relay Service Program, Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, Miracom USA, Inc. (now InnoCaption, Inc.), Certification to Provide Internet Protocol Captioned Telephone Service (IP CTS) Review of InnoCaption, Inc., Request for Review of Withholding of TRS Fund Compensation Payments, CG Doc Nos. 13-24, 10-51, 03-123, Order, 30 FCC Rcd 2934 (2015).*

¹⁸ InnoCaption received \$14,939.94 in compensation from the TRS Fund for minutes handled in June 2014 and July 2014. Pursuant to the terms of its conditional certification InnoCaption's CEO, Chuck Owen, advised CGB in its (continued....)

III. TERMS OF AGREEMENT

- 9. <u>Adopting Order</u>. The provisions of this Consent Decree shall be incorporated by the Bureau in an Adopting Order.
- 10. **Jurisdiction**. InnoCaption agrees that the Bureau has jurisdiction over it and the matters contained in this Consent Decree and has the authority to enter into and adopt this Consent Decree.
- 11. **Effective Date**. The Parties agree that this Consent Decree shall become effective on the Effective Date as defined herein. As of the Effective Date, the Parties agree that this Consent Decree shall have the same force and effect as any other order of the Commission.
- 12. <u>Termination of Investigation</u>. In express reliance on the covenants and representations in this Consent Decree and to avoid further expenditure of public resources, the Bureau agrees to terminate the Investigation. In consideration for the termination of the Investigation, InnoCaption agrees to the terms, conditions, and procedures contained herein. The Bureau further agrees that, in the absence of new material evidence, it will not use the facts developed in the Investigation through the Effective Date, or the existence of this Consent Decree, to institute, on its own motion, any new proceeding, formal or informal, or take any action against InnoCaption and its regulated affiliates concerning the matters that were the subject of the Investigation. The Bureau also agrees that, in the absence of new material evidence, it will not use the facts developed in the Investigation through the Effective Date, or the existence of this Consent Decree, to institute on its own motion any proceeding, formal or informal, or take any action on its own motion against InnoCaption. The facts developed in the Investigation may be used in determining InnoCaption's qualification to hold a TRS certification.
- 13. <u>Admissions</u>. InnoCaption admits for the purpose of this Consent Decree and for Commission civil enforcement purposes, and in express reliance on the provisions of paragraph 12 herein, that its actions as described in paragraphs 7 and 8 herein violated Sections 64.604(a)(3)(ii), 64.604(c)(iii)(D)(1), and 64.605(a)(2) of the Rules and its conditional certification. InnoCaption admits that because it violated the above referenced rules, the minutes submitted to the TRS Fund administrator are non-compensable and are not eligible for reimbursement from the TRS Fund.
- 14. **Representations; Warranties**. InnoCaption represents and warrants that as of May 22, 2015, the Company reimbursed the TRS Fund \$14,939.94 for monies InnoCaption received that it was not entitled to for minutes generated in June 2014 and July 2014.
- 15. <u>Compliance Officer</u>. Within thirty (30) calendar days after the Effective Date, Company shall designate a senior company manager with the requisite managerial and organizational authority to serve as a Compliance Officer and to discharge the duties set forth below. The person designated as the Compliance Officer shall be responsible for developing, implementing, and administering the Compliance Plan and ensuring that the Company complies with the terms and conditions of the Compliance Plan and the terms and conditions of this Consent Decree. In addition to the general knowledge of the Communications Laws necessary to discharge his or her duties under this Consent Decree, the Compliance Officer shall have specific knowledge of the TRS Rules.
- 16. <u>Compliance Plan</u>. For purposes of settling the matters set forth herein, InnoCaption agrees that it shall, within the dates set out below, develop and implement a Compliance Plan designed to ensure future compliance with the Communications Laws and the terms and conditions of this Consent Decree.
 - (a) **Operating Procedures**. InnoCaption will implement, at a minimum, the following procedures:

(Continued from previous page)
Quarterly Report ending December 31, 2014 that the Company reimbursed the TRS Fund for these monies.
However, payment was not actually submitted to the TRS Fund until May 22, 2015. See May 22, 2015 e-mail from
Cristina Duarte, Regulatory Affairs Manager, InnoCaption to Sharon D. Lee, Deputy Chief, Telecommunications
Consumers Division, FCC Enforcement Bureau providing notice of InnoCaption's payment to the TRS Fund
administrator.

- i. Within thirty (30) calendar days after the Effective Date, InnoCaption shall establish and maintain Operating Procedures that all Covered Personnel shall follow to help ensure InnoCaption's compliance with the TRS Rules and terms of this Consent Decree. InnoCaption's Operating Procedures shall, at a minimum, include procedures and policies specifically designed to ensure that InnoCaption's operations and provision of TRS, including any aspect of TRS provided by independent contractors, subcontractors, or agents, comply with all TRS Rules applicable to InnoCaption as a certified TRS provider.
- ii. Within thirty (30) calendar days after the Effective Date, InnoCaption shall establish, use, and maintain Operating Procedures that enable the Compliance Officer to maintain records of any issues the Company experiences in complying with the Emergency Call Handling Requirements and TRS Rules. The Compliance Procedures will also enable the Company to retain records necessary for preparing the reports described in paragraphs 17 and 18 of this Consent Decree.
- iii. Within thirty (30) calendar days after the Effective Date, InnoCaption shall establish, use, and maintain Operating Procedures to validate the accuracy of call detail records to ensure that only compensable minutes are marked for reimbursement from the TRS Fund.
- iv. Within thirty (30) calendar days after the Effective Date, InnoCaption shall establish, use, and maintain Operating Procedures to routinely assess the Company's compliance with the Emergency Call Handling Requirements. The applicable Operating Procedures may be utilized by InnoCaption or a party acting on InnoCaption's behalf.
- v. Within forty-five (45) calendar days after the Effective Date, InnoCaption shall establish, use, and maintain Operating Procedures to ensure timely notification to the Commission and users of any systemic failure of more than one (1) day in duration that prevents users from making and receiving any type of IP CTS call. The procedures established by InnoCaption will require the Company to notify the Commission in writing within two (2) calendar days of any applicable systemic failure and include a description of the cause of the failure, the steps InnoCaption has taken to correct the failure, and confirmation as to whether the failure is ongoing.
- vi. Within ninety (90) calendar days after the Effective Date, InnoCaption shall establish, use, and maintain Operating Procedures for reviewing and modifying all printed literature provided to the public regarding the Company's IP CTS, including marketing materials and materials provided to new users, to ensure that printed materials include an 911 Calling advisory.
- vii. Within one hundred twenty (120) calendar days after the Effective Date, InnoCaption shall establish, use, and maintain Operating Procedures that address the handling of calls identified as involving the misuse of IP CTS.
- (b) <u>Compliance Manual</u>. Within ninety (90) calendar days after the Effective Date, the Compliance Officer shall develop and distribute a Compliance Manual to all Covered Personnel. The Compliance Manual shall set forth the TRS Rules and explain the Operating Procedures that Covered Personnel shall follow to help ensure that InnoCaption complies with such rules and the terms and conditions of this Consent Decree. InnoCaption shall periodically review and revise the Compliance Manual as necessary to ensure that the information set forth therein remains current and accurate. InnoCaption shall distribute any revisions to the Compliance Manual promptly to all Covered Personnel.

- (c) <u>Compliance Training Program</u>. InnoCaption shall establish and implement a Compliance Training Program on compliance with the TRS Rules and the Operating Procedures. As part of the Compliance Training Program, Covered Personnel shall be advised of InnoCaption's obligation to report any noncompliance with the TRS Rules under paragraph 17 of this Consent Decree and shall be instructed on how to disclose noncompliance to the Compliance Officer. All Covered Personnel shall be trained pursuant to the Compliance Training Program within ninety (90) calendar days after InnoCaption is approved to provide IP CTS, i.e., the Company's certification suspension is lifted, except that any person who becomes a Covered Personnel at any time after the initial Compliance Training Program shall be trained within sixty (60) calendar days after the date such person becomes a Covered Personnel. InnoCaption shall repeat compliance training on an annual basis, and shall periodically review and revise the Compliance Training Program as necessary to ensure that it remains current and complete and to enhance its effectiveness.
- (d) <u>Additional Compliance Measures</u>. InnoCaption shall implement the following additional compliance measures:
 - i. Within forty-five (45) calendar days after the Effective Date, InnoCaption shall establish and implement procedures to test the Company's compliance with the Emergency Call Handling Requirements on a quarterly basis.
 - ii. Within ninety (90) calendar days after the Effective Date, InnoCaption shall post an "Emergency Calling" link that is prominently displayed on the front page of the Company's website and use the web page(s) associated with the link to inform and educate consumers on making 911 Calls. By clicking on the link, TRS users will be provided access to information on how to make 911 Calls through IP CTS using any product offered by the Company. The "Emergency Calling" page should include all requirements for using InnoCaption's IP CTS to make an 911 Call, any steps users will need to take to ensure that 911 Calls can be made, notices of any downloads/upgrades users must have to access InnoCaption's service and a clear list of specific devices that are not compatible with InnoCaption's service for purposes of making 911 Calls.
 - iii. Within one hundred twenty (120) calendar days after InnoCaption is approved to provide IP CTS, i.e., the Company's certification suspension is lifted, InnoCaption shall develop and implement training for Covered Personnel on the misuse of IP CTS. The training shall include the procedures for handling calls that the CA identifies as involving the misuse of IP CTS. After the initial training is conducted, InnoCaption shall include this training in the Compliance Training Program described in paragraph 16(c).
 - iv. InnoCaption shall test the Company's compliance with the Emergency Call Handling Requirements on a quarterly basis and maintain all documents associated with the testing. Tests must include an assessment of the Company's compliance with every aspect of the Emergency Call Handling Requirements, e.g., through delivery of a call to the PSAP, delivery of information to the PSAP, and reconnection of call legs. A detailed description of the parameters of the testing, e.g., the testing plan and test results must be included in the Compliance Reports described in paragraph 18. InnoCaption shall test the Company's compliance with the Emergency Call Handling Requirements no later than October 1, 2015.
 - v. Within thirty (30) calendar days after the Effective Date, InnoCaption shall maintain a record of information associated with all locations where InnoCaption's calls were accepted and handled. The records should denote the full address of the location, the contact information for the location's manager(s)

- or the CA located at an address, the types of calls handled at the location, e.g., non-emergency, emergency; critical dates associated with the location, e.g., opening date/first date calls were handled at a location, closing date/last date calls were handled at a location, and the relocation date (where applicable); and the name of any subcontractor(s) that managed the location(s) (where applicable).
- vi. Within one hundred and twenty (120) calendar days after the Effective Date, InnoCaption shall develop and implement processes to (1) *Identify* risks that could result in 911 Call failures, (2) *Protect* against such risks, (3) *Detect* future 911 Call failures, (4) *Respond* to such failures with remedial actions, including notification to consumers, and (5) *Recover* from such failures on a timely basis.
- vii. Within one hundred eighty (180) calendar days after the Effective Date, InnoCaption shall use best efforts to ensure that written agreements between InnoCaption and entities the Company contracts with in the provision of IP CTS to:
 - 1. designate a contact person from the entity available twenty-four (24) hours per day, seven (7) days per week for communications;
 - stipulate the terms, including timeframes and methodology, that will govern the entity's communications with InnoCaption about (a) events that result in service delays, degradations, interruptions, and/or outages; (b) testing/test results; and (c) internal reviews and/investigations; and,
 - 3. enable InnoCaption or its vendor(s) to provide the Bureau with all information and/or documents requested as part of a government investigation.

If InnoCaption is unable to execute or revise agreements with entities the Company contracts with in its provision of IP CTS as specified above within one hundred and eighty (180) days, the Company shall provide the Commission with a written explanation of why such agreement modifications could not be achieved.

- viii. As of the Effective Date, InnoCaption shall provide written notification to the Commission of substantive changes in the Company's IP CTS offerings at least sixty (60) calendar days after such changes occur, and must certify that the Company continues to meet the TRS Rules after implementing the substantive change. Substantive changes shall include, but not be limited to, changes in service features, the method consumers use to access InnoCaption's service, and the method InnoCaption uses to deliver captions to users. Notifications of substantive change shall be submitted electronically to Sharon Lee at Sharon.Lee@fcc.gov and fcce.gov. A copy of each notification shall also be submitted electronically to Gregory Hlibok, Chief, Disability Rights Office, Consumer and Governmental Affairs Bureau at Gregory.Hlibok@fcc.gov.
- ix. As of the Effective Date, InnoCaption shall obtain prior Commission authorization for a voluntary service interruption of more than 30 minutes in duration. InnoCaption shall contact Gregory Hlibok, Chief, Disability Rights Office, Consumer and Governmental Affairs Bureau at Gregory.Hlibok@fcc.gov for Commission authorization.
- x. InnoCaption shall provide the Commission with written notification within two (2) calendar days after the commencement of an unforeseen service interruption. Notifications of an unforeseen service interruption shall be submitted electronically to Sharon Lee at Sharon.Lee@fcc.gov and fcc.gov. A copy of each notification shall also be submitted electronically to Gregory Hlibok,

Chief, Disability Rights Office, Consumer and Governmental Affairs Bureau at Gregory.Hlibok@fcc.gov.

- Rules and with the terms and conditions of this Consent Decree within fifteen (15) calendar days after discovery of such noncompliance. Such reports shall include a detailed explanation of: (i) each instance of noncompliance, and the minutes and telephone numbers (where applicable) involved in each instance of noncompliance; (ii) the steps that InnoCaption has taken or will take, including any monies paid back to the TRS Fund, to remedy such noncompliance; (iii) the schedule on which such remedial actions will be taken; and (iv) the steps that InnoCaption has taken or will take to prevent the recurrence of any such noncompliance. All reports of noncompliance shall be submitted to the Chief, Telecommunications Consumers Division, Enforcement Bureau, Federal Communications Commission, Room 3-C366, 445 12th Street, S.W. Washington, D.C. 20554, with a copy submitted electronically to Sharon Lee at Sharon.Lee@fcc.gov and to fccebaccess@fcc.gov.
- 18. <u>Compliance Reports</u>. InnoCaption shall file compliance reports with the Commission one hundred twenty (120) calendar days after the Effective Date, twelve (12) months after the Effective Date, twenty-four (24) months after the Effective Date, thirty-six (36) months after the Effective Date, forty-eight (48) months and sixty (60) months after the Effective Date.
 - a. Each Compliance Report shall include a detailed description of InnoCaption's efforts during the relevant period to comply with the terms and conditions of this Consent Decree and the TRS Rules, including accepting and handling 911 Calls. At a minimum, each Compliance Report shall include the following:
 - i. A summary of all 911 test calls made since the last Compliance Report was filed and the results of each test call regardless of whether the test calls were made by InnoCaption or by an entity performing on behalf of InnoCaption or pursuant to an agreement with InnoCaption and the specific provision of the Commission's TRS rules being tested on each call, (e.g. 911 Call prioritization, ability to reconnect after a disconnection, ability to deliver to the PSAP the required information about the caller and InnoCaption, etc.).
 - Specific failure detection mechanisms implemented under this Compliance Plan, including an explanation of any measures implemented or proposed to better detect systemic 911 Call failures or non-compliance with the Emergency Call Handling Requirements.
 - iii. Summary information regarding any information-sharing agreements with subcontractors reviewed or revised as set forth above.
 - iv. A description of all incidents of non-compliance identified since the last Compliance Report was filed and the date such incidents were reported to the Commission pursuant to paragraph 17 herein.
 - v. A description of each service offering or product that could generate minutes that would be submitted to the TRS Fund administrator for reimbursement that was offered to the users during the period since the last Compliance Report was filed. The description should include the date that offering or product was first advertised to users or potential users and details of how the offering or product worked.
 - vi. A copy of all webpages that reflect a new service offering or product that could generate minutes that would be submitted to the TRS Fund administrator for reimbursement. The webpage should reflect the copy displayed on the first day that the offering or product was added to InnoCaption's website or that was distributed for publication on another entity's website.

- b. In addition, each Compliance Report shall include a certification by the Compliance Officer, as an agent of and on behalf of InnoCaption, stating that the Compliance Officer has personal knowledge that InnoCaption: (i) has established and implemented the Compliance Plan; (ii) has utilized the Operating Procedures since the implementation of the Compliance Plan; and (iii) is not aware of any instances of material noncompliance with the terms and conditions of this Consent Decree, including the reporting obligations set forth in paragraph 17 of this Consent Decree that have not been reported to the Commission.
- c. The Compliance Officer's certification shall be accompanied by a statement explaining the basis for such certification and shall comply with Section 1.16 of the Rules and be subscribed to as true under penalty of perjury in substantially the form set forth therein.¹⁹
- d. If the Compliance Officer cannot provide the requisite certification, the Compliance Officer, as an agent of and on behalf of InnoCaption, shall provide the Commission with a detailed explanation of the reason(s) why and describe fully: (i) each instance of noncompliance; (ii) the steps that InnoCaption has taken or will take to remedy such noncompliance, including the schedule on which proposed remedial actions will be taken; and (iii) the steps that InnoCaption has taken or will take to prevent the recurrence of any such noncompliance, including the schedule on which such preventive action will be taken.
- e. All Compliance Reports shall be submitted to Chief, Telecommunications Consumer Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Washington, DC 20554, with a copy submitted electronically to Sharon Lee at Sharon.Lee@fcc.gov and fccebaccess@fcc.gov. A copy of each Compliance Report shall also be submitted electronically to Gregory Hlibok, Chief, Disability Rights Office, Consumer and Governmental Affairs Bureau at Gregory.Hlibok@fcc.gov.
- 19. <u>Termination Date</u>. Unless stated otherwise, the requirements set forth in paragraphs 15 through 18 of this Consent Decree shall expire sixty month (60) months after the Effective Date.
- 20. <u>Section 225 Complaints; Subsequent Investigations</u>. Nothing in this Consent Decree shall prevent the Commission or its delegated authority from adjudicating complaints filed pursuant to Section 225 of the Act²⁰ against InnoCaption or its affiliates for alleged violations of the Act, or for any other type of alleged misconduct, regardless of when such misconduct took place. The Commission's adjudication of any such complaint will be based solely on the record developed in that proceeding. Except as expressly provided in this Consent Decree, this Consent Decree shall not prevent the Commission from investigating new evidence of noncompliance by InnoCaption with the Communications Laws.
- 21. <u>Civil Penalty</u>. For purposes of settling the matters set forth herein, InnoCaption shall pay a civil penalty of twenty-five thousand dollars (\$25,000) to the United States Treasury within thirty (30) calendar days after the Effective Date. InnoCaption acknowledges and agrees that upon execution of this Consent Decree, the civil penalty shall become a "Claim" or "Debt" as defined in 31 U.S.C. § 3701(b)(1) (hereinafter referred to (together with all accrued interest, penalties, and costs as set forth in paragraph 23 below) as the Debt).²¹ Upon an Event of Default (as defined in paragraph 22), all procedures for collection as permitted by law may, at the Commission's discretion, be initiated. InnoCaption further

²⁰ 47 U.S.C. § 225(e)(2).

¹⁹ 47 C.F.R. § 1.16.

²¹ Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, 110 Stat. 1321, 1358 (Apr. 26, 1996).

agrees that:

- a. the Bureau will assess the Company's compliance with this Consent Decree within one year of the Effective Date and may impose an additional fifty thousand dollars (\$50,000) civil penalty, or a lesser civil penalty at the Bureau's discretion, for failure to comply with this Consent Decree. Such civil penalty shall be in addition to, and not in lieu of, any forfeiture penalty the Commission may impose for any other violation(s) of the Commission's TRS rules or orders; and
- b. the Bureau will impose a civil penalty under Subparagraph 22(a) above through the following process: (i) The Bureau will notify InnoCaption, in writing, of any noncompliance with the Consent Decree and the notification shall describe the basis for the finding of noncompliance, and propose a civil penalty; (ii) InnoCaption will have thirty (30) days from the date of any such notification to provide a response; (iii) the Bureau will evaluate any such response, and either impose a \$50,000 civil penalty, or if appropriate, a lesser civil penalty, through a Demand for Payment; and, (iv) InnoCaption shall pay any additional civil penalty assessed against the Company within thirty (30) calendar days of the date of a Demand for Payment unless otherwise agreed to by the Bureau.

For any violation of this Consent Decree or the Commission's TRS rules or orders that occur after one year from the Effective Date, InnoCaption will be subject to forfeiture penalties consistent with Section 503 of the Act and the Commission's rules.

InnoCaption shall send electronic notification of payment to fccebaccess@fcc.gov on the date said payment is made. The payment must be made by check or similar instrument, wire transfer, or credit card, and must include the Account Number and FRN referenced above. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.²² When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters "FORF" in block number 24A (payment type code). Below are additional instructions that should be followed based on the form of payment selected:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.
- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

Questions regarding payment procedures should be addressed to the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

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²² An FCC Form 159 and detailed instructions for completing the form may be obtained at http://www.fcc.gov/Forms/Form159/159.pdf.

- 22. **Event of Default**. InnoCaption agrees that an Event of Default shall occur upon the failure by InnoCaption to pay the full amount of the civil penalty on or before the due date specified in this Consent Decree.
- Interest, Penalties, Charges, Acceleration of Maturity Date and Collection. 23 InnoCaption agrees that, upon the occurrence of an Event of Default under this Consent Decree, the then unpaid amount of the Debt shall become immediately due and payable in full and that, until payment in full, the Debt shall, (i) commencing on the date of the Event of Default, accrue interest, computed using the U.S. Prime Rate in effect on the date of the Event of Default plus 4.75 percent per annum; and (ii) commencing on the 91st day following an Event of Default, accrue a penalty of an additional 6 percent per annum. InnoCaption shall also be liable for payment of all administrative costs incurred in connection with the processing, handling and collection of the Debt. If an Event of Default occurs, InnoCaption acknowledges and agrees that any collection procedure permitted by law may, at the Commission's discretion, be initiated. These remedies include but are not limited to, the Commission's offset of the Debt against any TRS Fund reimbursements owed to InnoCaption until the Debt is paid in full. If an Event of Default occurs, InnoCaption agrees that the Commission, through the Bureau, may direct the TRS Fund administrator to effectuate the offset against all TRS Fund reimbursements owed to InnoCaption and to send all such TRS funds to the U.S. Treasury. InnoCaption waives all rights to notice, presentment, demand, protest, or notice of protest of any kind with respect to the occurrence of an Event of Default, acceleration of the Debt, accrual of interest, penalties and costs on the Debt, the Commission's exercise of any lawful collection procedure, including the Commission's right to offset, and all other rights that InnoCaption may have under the DCIA and its implementing regulations, including the Commission's debt collection regulations at 47 C.F.R. §§1.1901, et seq.
- 24. <u>Waivers</u>. As of the Effective Date, InnoCaption waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Adopting Order. InnoCaption shall retain the right to challenge the Commission interpretation of the Consent Decree or any terms contained herein. If either Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Consent Decree or the Adopting Order, neither InnoCaption nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and InnoCaption shall waive any statutory right to a trial *de novo*. InnoCaption hereby agrees to waive any claims it may otherwise have under the Equal Access to Justice Act²³ relating to the matters addressed in this Consent Decree.
- 25. <u>Severability</u>. The Parties agree that if any of the provisions of the Consent Decree shall be held unenforceable by any court of competent jurisdiction, such unenforceability shall not render unenforceable the entire Consent Decree, but rather the entire Consent Decree shall be construed as if not containing the particular unenforceable provision or provisions, and the rights and obligations of the Parties shall be construed and enforced accordingly.
- 26. <u>Invalidity</u>. In the event that this Consent Decree in its entirety is rendered invalid by any court of competent jurisdiction, it shall become null and void and may not be used in any manner in any legal proceeding.
- 27. <u>Subsequent Rule or Order</u>. The Parties agree that if any provision of the Consent Decree conflicts with any subsequent Rule or Order adopted by the Commission (except an Order specifically intended to revise the terms of this Consent Decree to which InnoCaption does not expressly consent) that provision will be superseded by such Rule or Order.
- 28. <u>Successors and Assigns</u>. InnoCaption agrees that the provisions of this Consent Decree shall be binding on its successors, assigns, and transferees.
- 29. **Final Settlement**. The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Parties with respect to the Investigation.

²³ See 5 U.S.C. § 504; 47 C.F.R. §§ 1.1501–1.1530.

- 30. <u>Modifications</u>. This Consent Decree cannot be modified without the advance written consent of both Parties.
- 31. **Paragraph Headings**. The headings of the paragraphs in this Consent Decree are inserted for convenience only and are not intended to affect the meaning or interpretation of this Consent Decree.
- 32. <u>Authorized Representative</u>. Each Party represents and warrants to the other that it has full power and authority to enter into this Consent Decree. Each person signing this Consent Decree on behalf of a Party hereby represents that he or she is fully authorized by the Party to execute this Consent Decree and to bind the Party to its terms and conditions.

electronically or by facsimile). Each co	onsent Decree may be signed in counterpart (including punterpart, when executed and delivered, shall be an original, and institute one and the same fully executed instrument.
Travis LeBlanc	-
Chief	
Enforcement Bureau	
Date	-
Cristina Duarte	-
Senior Regulatory Affairs Manager	
InnoCaption, Inc.	
innocaption, inc.	
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Date	